

**Physicians for Social Responsibility * Farmworker Justice Fund
* Beyond Pesticides * Sierra Club * Defenders of Wildlife *
Earthjustice * Natural Resources Defense Council *
Public Citizen * Trial Lawyers for Public Justice**

***Supreme Court to Decide Whether Federal Pesticide Law
Prevents Citizens From Seeking Redress for Harm Caused by
Pesticides***

On January 10, 2005, the U.S. Supreme Court will hear argument in *Bates v. Dow Agrosciences*, a case that will determine whether federal pesticide law closes the courthouse doors to people injured by pesticides. In *Bates*, Texas farmers applied an herbicide called “Strongarm” to prevent weeds in their peanut crops, but Strongarm stunted the peanut crops, causing serious economic damage. The Texas farmers went to state court in an effort to make the pesticide makers pay for damage to the crops. The pesticide makers claim they are shielded from court challenges by federal law, the key dispute now before the US Supreme Court. The importance of the case, however, goes beyond the right to recover for crop damage. The Supreme Court’s ruling will also determine whether the thousands of people harmed by pesticides can hold pesticide companies accountable for making and distributing dangerous chemicals. Pesticide companies hold that federal law shields them from all such suits-

Physicians for Social Responsibility, Farmworker Justice Fund, Beyond Pesticides, Sierra Club, Natural Resources Defense Council, Defenders of Wildlife, Public Citizen, and Trial Lawyers for Public Justice filed a friend of the court brief written by Earthjustice, Public Citizen, and Trial Lawyers for Public Justice, urging the Court to preserve citizens’ rights to recover for harms caused by pesticides.

Federal Pesticide Regulation Does Not Guard Against Harm to People From Pesticide Use

Under federal pesticide law, pesticide companies must write and update labels for their products that guard against adverse health and environmental effects. EPA approves the labels submitted by the companies under a risk-benefit standard that does not prevent all harm to the public. A pesticide is misbranded if its label does not provide adequate health and environmental protection, and EPA’s approval of the label is no defense to a misbranding offense.

In the wake of *Silent Spring*, Congress added health and environmental standards to federal pesticide law, but it allowed previously registered pesticides to remain on the market until EPA reviewed them under the new standards. EPA will not complete its review of pre-1972 pesticides until 2008, presuming it meets the deadline. Even then, pesticides must pass muster under standards that are constantly upgraded by Congress and EPA based on new information and health and environmental concerns. State court actions bring these effects to light and spur better compliance with federal standards.

State Court Actions Provide Compensation to People Injured due to EPA's Delays in Bringing its Pesticide Licenses into Compliance with Federal Standards and for Harm to People that is not Regulated by EPA

In 1993, Amvac Corp. marketed an extremely toxic pesticide, phosdrin, for the first time in Washington state, even though it had been suspected of poisoning more than 600 workers in California from 1982 through 1989, and Amvac had acknowledged that the existing pesticide label did not adequately protect workers. Throughout the summer of 1993, 29 workers reported acute pesticide poisoning from exposure to phosdrin. The Washington Department of Agriculture banned all phosdrin use before the end of the summer, and, in the face of EPA's plans to cancel the pesticide nationwide, Amvac cancelled its use the following year. The workers became casualties of EPA's delays in canceling the pesticide. Three workers sued Amvac and the distributor for the poisonings and eventually obtained a settlement.

Ruiz-Guzman v. Amvac Chemical Corp., 7 P.3d 795 (Wash. 2000)
(<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=wa&vol=684341maj&searchval&invol=1>).
The Ninth Circuit held that FIFRA did not preempt the workers' design defect claims. Ruiz-Guzman v. Amvac Chemical Corp., 243 F.3d 549 (9th Cir. 2000).

In 1994 a nine-year-old boy ate rat poison that tasted sweet and looked like candy at a boys' club and died as a result. While the label cautioned to keep the rat poison out of reach of children, a jury awarded the boy's family damages upon finding that the company withheld adverse incidents of human exposure from EPA and that the product could have been designed with a bittering agent to avoid being mistaken for candy and with a substance that would induce vomiting.

Banks v. ICI Americas, Inc., 264 Ga. 732, 734, 450 S.E.2d 671, 673 (1994).

Dozens of people, including children, suffered poisonings and other adverse health effects from coming into contact with arsenic-treated wood used in playground structures and wood decks. EPA had found that the wood products cause excessive cancer and birth defects as long ago as 1984, but did not require mandatory warnings. When numerous lawsuits were filed against the pesticide companies, the industry and EPA agreed to a phase-out of the arsenic-treated wood for residential uses.

A. Liptak, The Poison is Arsenic & the Suspect Wood, THE NEW YORK TIMES, at A1, June 19, 2002 ; Environmental Working Group & Healthy Bldg Network, Poisoned Playgrounds, 13-14 (2001) (<http://www.ewg.org/reports/poisonedplaygrounds/>); 67 Fed. Reg. 8244 (Feb. 22, 2002); http://www.epa.gov/pesticides/factsheets/chemicals/cca_transition.htm.

In 1977, EPA found that the fungicide benomyl causes birth defects, including rats born with no or very small eyes after in utero exposure, but EPA allowed the pesticide to be used without any birth defect warnings. Dozens of children in rural areas have since been born with no or tiny eyes after their mothers were exposed to benomyl during pregnancy. One family successfully sued the company for compensation for the harm to a child whose mother was exposed by applications at a nearby farm.

42 Fed. Reg. 61,788 (1977); 44 Fed. Reg. 51,169 (1979); 47 Fed. Reg. 46,747, 46,750 (1982);
Castillo v. E.I. DuPont de Nemours, Co., 854 So.2d 1264 (Fla. 2003);
http://caselaw.lp.findlaw.com/data2/floridastatecases/7_2003/sc00-490.pdf

In 1993, Harold Eyl, a maintenance worker for the City of Wisner, Nebraska, came into contact with an herbicide (Pramitol) applied to the playground where he was laying pea rock. He experienced a severe skin reaction that caused swelling in his legs, blood vessel inflammation, and blood clots that left him permanently disabled and unable to work. A jury returned a verdict against the pesticide distributor, but the Nebraska Supreme Court reversed on preemption grounds.

[http://www.citizen.org/documents/Petition for Cert in Final PDF.pdf](http://www.citizen.org/documents/Petition%20for%20Cert%20in%20Final%20PDF.pdf)

This Supreme Court case comes at a time when federal health and safety regulations are in full retreat as evidenced by the recent scandals involving approval of harmful drugs by the federal Food and Drug Administration. In addition, the federal government in 2004 made it much easier for pesticide makers to get federal approval for their poisons where their use threatens wildlife protected by the Endangered Species Act.